

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**A.W., Appellant**

**and**

**U.S. POSTAL SERVICE, HUNTINGTOWN  
POST OFFICE, Huntingtown, MD, Employer**

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**Docket No. 21-0298  
Issued: August 26, 2021**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 23, 2020 appellant filed a timely appeal from a November 24, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated June 25, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the November 24, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On November 21, 2017 appellant, then a 25-year-old sales, services, and distribution associate, filed a traumatic injury claim (Form CA-1) alleging a left knee injury on November 21, 2017 when her left knee buckled as she exited her postal vehicle and she fell to the ground while in the performance of duty. She stopped work on November 24, 2017, but returned to limited-duty work on a full-time basis in December 2017. OWCP accepted appellant's claim for complex tears of the medial and lateral menisci of the left knee and on March 30, 2018 she stopped work and underwent OWCP-authorized left knee surgery, including anterior cruciate ligament reconstruction, medial meniscal repair, and partial lateral meniscal debridement. OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls commencing March 30, 2018 and on the periodic rolls commencing February 3, 2019.

On November 9, 2019 appellant began working in a limited-duty position, which required standing for one hour per day and walking for one and a half hours per day. She stopped work on November 18, 2019 and filed a notice of recurrence (Form CA-2a) on December 6, 2019, alleging that she sustained a recurrence of disability on November 18, 2019 due to her November 21, 2017 employment injury.<sup>3</sup>

In a December 12, 2019 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It afforded her 30 days to respond.

In response, appellant submitted statements regarding the progression of her left leg symptoms. She also submitted a December 4, 2019 report from Dr. Easton Manderson, a Board-certified orthopedic surgeon, who indicated that he had been treating appellant for left knee pain and that she had been unable to return to work for the period November 19 through 22, 2019. Dr. Manderson advised that appellant could not lift more than 20 pounds. In a separate December 4, 2019 report, he noted that appellant would not be able to work for the period December 4 through 16, 2019 and could not lift more than 20 pounds.

In a December 18, 2019 report, Dr. Manderson indicated that appellant had been under his care for a complex tear of the medial meniscus and noted that she was allowed to return to work on January 3, 2020, but could not engage in bending, prolonged standing, or lifting more than 20 pounds. He indicated, "[p]lease allow patient to work light status due to knee pain." In an undated report, Dr. Manderson advised that appellant had been unable to work for the period January 3 through 24, 2020 and indicated that she could only perform light-duty work due to knee pain.

Dr. Christopher K. Riley, a Board-certified family practitioner, noted in a January 15, 2020 report, that appellant indicated that she continued to experience complications from her left knee surgery. He diagnosed lower back nerve impingement, neuropathy, and patellofemoral symptoms. On a "patient active problem list" Dr. Riley listed the conditions of current left knee meniscus tear and left knee anterior cruciate ligament tear. In a partially legible February 7, 2020 report, Dr. Eric Yakish, a Board-certified orthopedic surgeon, diagnosed: status post left knee surgery with mild increased signal and heterogeneity of the posterior medial meniscus; minimal hypertrophic

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<sup>3</sup> Appellant inadvertently indicated that she sustained a recurrence of disability on November 14, 2019, but she did not actually stop work until November 18, 2019.

changes without significant cartilage thinning; slight lateral tibiofemoral cartilage heterogeneity; and borderline joint effusion with mild edema at Hoffa's fat pad and small inferior retropatellar bursa. On February 10, 2020 he provided the same diagnoses. Appellant also submitted a partially legible February 7, 2020 report from Dr. Eharuna Tychus, a Board-certified internist, who indicated that appellant had recently been diagnosed with patellofemoral syndrome.

By decision dated February 19, 2020, OWCP denied appellant's recurrence claim, finding that she had not submitted sufficient medical evidence to demonstrate that her November 18, 2019 work stoppage was causally related to her accepted November 21, 2017 employment injury. It explained that appellant did not establish that her disability was "due to a material change/worsening" of her employment-related conditions.

In a February 27, 2020 letter, appellant requested that her claim be "upgraded" to include acceptance of patellofemoral syndrome and nerve impingement. In a March 19, 2020 letter, she requested reconsideration of OWCP's February 19, 2020 decision. Appellant submitted an October 29, 2019 report from Dr. Manderson who provided a clinical impression of torn medial meniscus and indicated that appellant could perform light-duty work for six hours per day. Dr. Manderson noted, "Once the cause of her present disabling pain is identified and properly treated after proper rehabilitation she will be able to return to regular duty." In an October 30, 2019 report, he recommended work restrictions, including lifting no more than 20 pounds. On February 11, 2020 Dr. Manderson indicated that appellant could perform light-duty work with restrictions including lifting no more than 20 pounds. In a February 13, 2020 report, Dr. Carl Cappelletti, a physical medicine and rehabilitation physician, indicated that he administered a steroid injection in appellant's left knee at the Hoffa's fat pad.

By decision dated June 25, 2020, OWCP denied modification of its February 19, 2020 decision. It also found that appellant had not met her burden of proof to expand the acceptance of her claim to include the additional conditions of patellofemoral syndrome and nerve impingement.

On November 17, 2020 appellant requested reconsideration of the June 25, 2020 decision. In a November 17, 2020 statement, she again argued that her claim should be "upgrade[d]" to include the acceptance of patellofemoral syndrome and nerve impingement.

Appellant submitted several job position descriptions from 2019 and 2020 with related offer letters, a January 22, 2019 administrative document concerning her medication regimen and upcoming medical appointments, a March 19, 2020 letter regarding her attempts to obtain medical documentation, an October 26, 2020 letter regarding vocational rehabilitation placement, a document containing brief summaries of Board cases concerning the termination of compensation, a portion of a document discussing federal health benefits, and several letters concerning the progress of her reconsideration request. She also submitted an unsigned July 24, 2020 letter from an unidentified healthcare provider noting appellant's history of injury and that her symptoms were aggravated during the period November 9 to December 4, 2020.

By decision dated November 24, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>4</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>8</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>9</sup> and the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup>

## **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant neither established that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. In a November 17, 2020 statement, appellant argued that her claim should be "upgrade[d]" to

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<sup>4</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>7</sup> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> 20 C.F.R. § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>10</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

include the acceptance of patellofemoral syndrome and nerve impingement. However, OWCP had previously considered and rejected this same argument when it previously denied appellant's claim. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>11</sup> Appellant also submitted a document containing brief summaries of Board cases concerning the termination of compensation, but this document of general application would not be relevant to the issues of the present case. The Board has held that the submission of evidence or argument, which does not address the particular issue involved, does not constitute a basis for reopening a case.<sup>12</sup>

Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

On reconsideration appellant also did not submit probative medical evidence despite the fact that the underlying issues of this case, recurrence of disability and expansion of the accepted conditions, are medical in nature. She submitted an unsigned July 24, 2020 letter from an unidentified healthcare provider, but this document does not constitute medical evidence under FECA as there is no indication that the author is a physician.<sup>13</sup> Appellant also submitted other documents, including several job position descriptions from 2019 and 2020 with related offer letters, a January 22, 2019 administrative document concerning her medication regimen and upcoming medical appointments, a March 19, 2020 letter regarding her attempts to obtain medical documentation, an October 26, 2020 letter regarding vocational rehabilitation placement, a portion of a document discussing federal health benefits, and several letters concerning the progress of her reconsideration request. These documents also are not relevant to the underlying issues of the case and, thus, would not require reopening of appellant's case for merit review. As noted above, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>14</sup> Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>11</sup> See *supra* note 9.

<sup>12</sup> See *supra* note 10.

<sup>13</sup> See *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>14</sup> See *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board